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CHIEF ADMINISTRATIVE LAW JUDGE
TERESA A. DEMEO
CHRISTOPHER M. TATE
MARCELLA M. SEABURG-BRACKETT
MATTHEW J. TIERNEY
PRINCIPAL ADMINISTRATIVE LAW JUDGE

STATE OF NEW YORK
UNEMPLOYMENT INSURANCE APPEAL BOARD
ADMINISTRATIVE LAW JUDGE SECTION
STATE OFFICE BUILDING - ROOM 2B46
250 VETERANS MEMORIAL HIGHWAY
HAUPPAUGE NY 11787
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CAROL PROCPIO
SENIOR ADMINISTRATIVE LAW JUDGE

DECISION AND NOTICE OF DECISION
DECISIÓN Y AVISO DE LA DECISIÓN TOMADA

A.L.J. Case No. 013-43181

Mailed and Filed: March 13, 2014

IN THE MATTER OF:

KRISTY A PFLUG
109 WOODLOT RD
RIDGE NY 11961

SUFFOLK CTY POLICE DEPT
30 YAPHANK AVENUE
YAPHANK NY 11980-0099

STEVEN J MOSER, ESQ
1 SCHOOL ST SUITE 207B
GLEN COVE NY 11542

ATTN: TODD COHEN
INDUSTRIAL U.I. SERVICES
20 SQUADRON BLVD SUITE 101
PO BOX 825
NEW CITY NY 10956

SUFFOLK COUNTY
DEPT OF CIVIL SERVICE
PO BOX 6100
HAUPPAUGE NY 11788-0099

Department of Labor Office: 801

Hearing Requested: December 18, 2013

PLEASE TAKE NOTICE that this decision has been duly mailed on the date listed above. If you appeared at the hearing and are not satisfied with this decision, you may appeal within **TWENTY DAYS** from the date this decision was mailed. **READ IMPORTANT INFORMATION ON REVERSE SIDE REGARDING YOUR RIGHT TO APPEAL.** Any party who failed to appear at the hearing has the right to apply to reopen the case. For the application to be granted, the party must apply within a reasonable time and must establish good cause for its failure to appear.

POR FAVOR TOME NOTA: esta decisión ha sido debidamente enviada por correo en la fecha que aparece arriba. Si usted asistió a la audiencia y no está satisfecho con la decisión, puede apelar dentro de **VEINTE DIAS** contados a partir de la fecha en que esta decisión fue enviada por correo. **LEA LA INFORMACIÓN IMPORTANTE AL REVERSO SOBRE SUS DERECHOS DE APELACIÓN.** Cualquiera de las partes que falle en comparecer a la audiencia, tiene el derecho de solicitar que se reabra su caso. Para que dicha solicitud sea otorgada, la parte interesada debe solicitarlo dentro de un periodo de tiempo razonable y debe establecer buena causa por no haber comparecido a la audiencia.

NOTICE OF DECISIONCLAIMANTS

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ALL PARTIES WILL RECEIVE A NOTICE OF RECEIPT OF APPEAL DIRECTLY FROM THE APPEAL BOARD AFTER ANY APPEAL IS MADE.

INSTRUCCIONES A LOS RECLAMANTESRECLAMANTES

SI NO EST" DE ACUERDO CON ESTA DECISIPN, USTED TIENE DERECHO DE APELARLA A LA JUNTA DE APELACIONES DEL SEGURO POR DESEMPLEO.

Las partes si lo desean, pueden estar representadas por abogados u otras personas que ellos seleccionen en la apelación a la Junta de Apelaciones (Appeal Board). Un abogado o un agente que esté registrado por la Junta de Apelaciones, puede cobrare honorarios por representarle. Estos honorarios deben ser aprobados por la Junta de Apelaciones antes que el pago pueda ser aceptado por dicho abogado o agente registrado. Ninguna otra persona podrá cobrar honorarios por representar al reclamante. Si usted no tiene suficiente dinero para contratar a un abogado o un agente registrado, puede conseguir uno gratis a través de la Sociedad de Asistencia Legal (Legal Aid Society) o el Programa de Servicios Legales (Legal Services Program).

PARA APELAR LA DECISIPN

1. Continúe siguiendo **todas** las instrucciones de la oficina del Seguro por Desempleo (Unemployment Insurance) donde usted presentó su reclamo originalmente y para certificar por los beneficios mientras permanezca desempleado y esté reclamando beneficios. Esto protegerá su derecho a recibir cualquier beneficio que reclame.
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3. Los reclamantes no necesitan depositar dinero para poder apelar su caso.

TODAS LAS PARTES RECIBIR"N UN AVISO DE RECIBO DE APELACION DIREKTAMENTE DE LA JUNTA DE APELACIONES DESPUIS DE QUE SU PETICION SEA RECIBIDA.

DOCUMENTO IMPORTANTE. PUEDE OBTENER UNA TRADUCCIÓN DEL MISMO LLAMANDO
AL 1-888-209-8124 (FUERA DEL ESTADO DE NUEVA YORK 1-877-358-5306)

ISSUES: Voluntary leaving of employment without good cause.
Claimant's Application to Reopen Case Nos. 013-32872, 013-37749.

The Department of Labor issued the initial determination disqualifying the claimant from receiving benefits, effective July 5, 2013, on the basis that the claimant voluntarily separated from employment without good cause. The claimant requested a hearing.

The claimant has applied to reopen A.L.J. Case Nos. 013-32872 and 013-37749. In A.L.J. Case No. 013-32872, the Administrative Law Judge sustained the initial determination based upon the claimant's failure to appear at a hearing on October 16, 2013. In A.L.J. Case No. 013-37749, the Administrative Law Judge denied the claimant's application to reopen A.L.J. Case No. 013-32872 based upon the claimant's failure to appear at a hearing on December 13, 2013.

Hearings were held at which testimony was taken. There were appearances by the claimant and on behalf of the employer.

FINDINGS OF FACT: The claimant was employed as a 911 dispatcher for over 10 years until July 4, 2013. She was occasionally mandated to work overtime. When she was mandated she would work a 12 hour shift instead of her usual eight hour shift. She was mandated less than five times per year. She was on maternity leave for one year from April 10, 2011 through April 10, 2012. After she returned, due to staffing issues she was mandated approximately twice per week. After her return she developed transverse myelitis, which is a swelling of the spinal column. She began to develop severe headaches, which would sometimes last for 24 hours. Her doctor believed that her condition combined with the stress of the overtime was causing the headaches. Her doctor advised her not to work more than eight hours per shift. The claimant submitted several medical notes to the employer with requests that she no longer be mandated. The employer told her on each occasion that the note was insufficient. The claimant submitted a note dated November 17, 2012 which the employer accepted. The employer forwarded the note to its labor relations department. The labor relations department responded that there are no exemptions from mandated overtime. The claimant quit her job.

The claimant did not appear at the hearing in A.L.J. Case No. 013-32872 because her child had croup. She did not appear at the hearing in A.L.J. Case No. 013-37749 because her representative had a migraine.

OPINION: On application duly made, an Administrative Law Judge may reopen a case where a decision was made upon or following the default of a party if such party shows good cause for the default. (See, Appeal Board Rule 12 NYCRR 461.8.) The credible evidence establishes that the claimant failed to appear at the hearing in A.L.J. Case No. 013-32872 because her child was ill. The credible evidence establishes that the claimant failed to appear at the hearing in A.L.J. Case No. 013-37749 because her representative was ill. I find that such circumstances constitute good cause for the default and that the application to reopen is therefore granted.

Pursuant to Labor Law § 593 (1) (a), a claimant is disqualified from receiving benefits after a voluntary separation from employment without good cause.

The credible evidence establishes that the claimant quit her job because she had been working mandated overtime twice per week and her doctor advised her not to work overtime. Her doctor advised this because the overtime was causing her severe headaches due to a medical condition. She requested to be exempt from overtime and the employer denied this request. Because her doctor advised her not to work overtime and the employer would not accommodate this request, she had a compelling reason to quit. Accordingly, I conclude that the claimant quit her job with good cause.

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DECISION: The claimant's application to reopen A.L.J. Case Nos. 013-32872 and 013-37749 is granted.

The initial determination, disqualifying the claimant from receiving benefits, effective July 5, 2013, on the basis that the claimant voluntarily separated from employment without good cause, is overruled.

The claimant is allowed benefits with respect to the issues decided herein.

/s/ Scott Mann

Administrative Law Judge

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